HOUSE BILL NO. 220

INTRODUCED BY A. NOONAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEFINITIONS FOR THE ADMINISTRATION OF THE RENEWABLE RESOURCE STANDARD FOR PUBLIC UTILITIES AND ELECTRICITY SUPPLIERS; ALLOWING ELIGIBLE RENEWABLE RESOURCES OWNED BY A PUBLIC UTILITY TO BE USED TO COMPLY WITH COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENTS IN THE RENEWABLE RESOURCE STANDARD; REQUIRING A UTILITY TO CONSIDER DISPATCH ABILITY, GEOGRAPHIC DIVERSITY, AND SEASONALITY IN MEETING RENEWABLE ENERGY REQUIREMENTS; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2006, AND 90-3-1003, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution as described by federal energy regulatory commission regulations and open access transmission tariffs. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

~~(2)~~(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

~~(3)~~(4) "Community renewable energy project" means an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 5 megawatts in total calculated nameplate capacity.

~~(4)~~(5) "Competitive electricity supplier" means any person, corporation, or governmental entity that is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or cooperative.

~~(5)~~(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

~~(6)~~(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either the owner of a qualifying small power production facility or a balancing authority to rapidly start, stop, increase, or decrease electricity production from a qualifying small power production facility in order to respond to the balancing authority's needs to match supply resources to loads on the transmission system.

~~(7)~~(9) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces electricity from one or more of the following sources:

(a) wind;

(b) solar;

(c) geothermal;

(d) water power, in the case of a hydroelectric project that does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection ~~(7)~~ (9) for use in fuel cells; and

(i) the renewable energy fraction from the sources identified in subsections ~~(7)(a) through (7)(h)~~ (9)(a)

through (9)(h) of electricity production from a multiple-fuel process with fossil fuels.

(10) "Geographic diversity" means the degree to which a qualifying small power production facility is physically separated from other electric generating resources supplying electricity to a utility in order to reduce the likelihood that the electric generating resources will be similarly affected by climatic conditions, disruptions to the transmission system, or natural disaster.

~~(8)~~(11) "Local owners" means:

(a) Montana residents or entities composed of Montana residents;

(b) Montana small businesses;

(c) Montana nonprofit organizations;

(d) Montana-based tribal councils;

(e) Montana political subdivisions or local governments;

(f) Montana-based cooperatives other than cooperative utilities; or

(g) any combination of the individuals or entities listed in subsections ~~(8)(a) through (8)(f)~~ (11)(a) through (11)(f).

(12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(9)~~(13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

~~(10)~~(14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity generated by an eligible renewable resource that includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production and is tracked and verified by:

(a) the commission;

(b) an independent, renewable energy tracking system that encompasses Montana, Idaho, Washington, and Oregon; or

(c) a tracking system that covers states that are members of an independent transmission system operator in the midwest ~~and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production~~.

~~(11)~~(15) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

(16) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(12)~~(17) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

(a) located within 5 miles of the project;

(b) constructed within the same 12-month period; and

(c) under common ownership."

Section 2. Section 69-3-2004, MCA, is amended to read:

"69-3-2004. Renewable resource standard -- administrative penalty -- waiver. (1) Except as provided in 69-3-2007 and subsections (11) and (12) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) ~~As~~ Except as provided in subsection (3)(b)(ii), as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(ii) As part of their compliance with subsection (3)(a) and as an alternative to subsection (3)(b)(i), public utilities may use the renewable energy credits and the electricity output from an eligible renewable resource owned by a public utility and located in Montana that has a nameplate capacity of up to 50 megawatts.

(c) ~~Public~~ Unless the requirement is fulfilled pursuant to subsection (3)(b)(ii), utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2009.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical

energy in Montana from eligible renewable resources.

(b) (i) ~~As~~ Except as provided in subsection (4)(b)(ii), as part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) As part of their compliance with subsection (4)(a) and as an alternative to subsection (4)(b)(i), public utilities may use the renewable energy credits and the electricity output from an eligible renewable resource owned by a public utility and located in Montana that has a nameplate capacity of up to 75 megawatts.

~~(ii)~~(iii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) ~~Public~~ Unless the requirement is fulfilled pursuant to subsection (4)(b)(ii), public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under subsections (2) through (4), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.

(b) The standard in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until 3 months following the end of each compliance year to purchase renewable energy credits for that compliance year.

(7) (a) In order to meet the standard established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from an eligible renewable resource in which the associated renewable energy credits have not been sold separately;

(ii) renewable energy credits created by an eligible renewable resource purchased separately from the associated electricity; or

(iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of $10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(a).

(11) A public utility or competitive electricity supplier may petition the commission for a short-term waiver from full compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10). The petition must demonstrate that the:

(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved either because renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the public utility or competitive electricity supplier; or

(b) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

(12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection (12)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

Section 3. Section 69-3-2005, MCA, is amended to read:

"69-3-2005. Procurement -- cost recovery -- reporting. (1) In meeting the requirements of this part, a public utility shall:

(a) unless the renewable energy credits are procured pursuant to 69-3-2004(3)(b)(ii) or (4)(b)(ii), conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration; ~~and~~

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits; and

(c) consider the importance of dispatch ability, geographic diversity, seasonality, and other operational characteristics of the eligible renewable resource when considering the procurement of renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-401(13)(a), during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

~~(a) January 1, 2007, for the standard required in 69-3-2004(2);~~

~~(b) June 1, 2008, for the standard required in 69-3-2004(3);~~

~~(c)~~(a) June 1, 2013, for the standard required in 69-3-2004(4); and

~~(d)~~(b) any additional future dates as required by the commission.

(6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. The reports must be filed by March 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

Section 4. Section 69-3-2006, MCA, is amended to read:

"69-3-2006. Commission authority -- rulemaking authority. (1) The commission has the authority to generally implement and enforce the provisions of this part.

(2) The commission shall adopt rules ~~before June 1, 2006,~~ to:

(a) ~~select a renewable energy credit tracking system to verify compliance with this part;~~ track renewable energy credits or use renewable energy credit tracking systems that track renewable energy generation in the region that encompasses Montana, Idaho, Washington, and Oregon or states that are members of an independent transmission system operator in the midwest to verify compliance with this part;

(b) establish a system by which renewable resources become certified as eligible renewable resources;

(c) define the process by which waivers from full compliance with this part may be granted;

(d) establish procedures under which contracts for eligible renewable resources and renewable energy credits may receive advanced approval;

(e) define the requirements governing renewable energy procurement plans and annual reports; and

(f) generally implement and enforce the provisions of this part."

Section 5. Section 90-3-1003, MCA, is amended to read:

"90-3-1003. Research and commercialization account -- use. (1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research and commercialization projects, clean coal research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana; or

(d) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least 20% of the account funds approved for research and commercialization projects must be directed toward projects that enhance production agriculture.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5)(a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a

recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(6)~~ 69-3-2003(9) to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 7. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2009.

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